

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JOHN KEVIN WALTON,

Plaintiff,

vs.

NEMANJA VIDAKOVIC, Officer;
ZACHARY KINSELLA, Officer;
GABRIEL PENHAERRERA, KATIE
STENNECHE, Sargent; TAMMIE
JENSEN, Mental Health Coordinator;
CAPTAIN WEST, and LT.
MORRISON,

Defendants.

8:20CV123

MEMORANDUM AND ORDER

The court dismissed this matter without prejudice on June 11, 2020 after Plaintiff failed to show cause for his failure to pay the initial partial filing fee. (Filings [8](#) & [9](#).) On June 22, 2020, the court received correspondence from Plaintiff dated June 17, 2020 ([filing 10](#)) which has been docketed as a response to the court's May 6, 2020 order to show cause. In his response, Plaintiff represents that his failure to pay the initial partial filing fee by the court's deadline was caused by prison officials' failure to adhere to his request to remit payment using funds from his account. Plaintiff attached a copy of a Douglas County Department of Corrections Personal Property Release Form dated May 11, 2020, in which Plaintiff requests a \$4.00 check be sent to the clerk of this court. A handwritten notation on the form indicates Plaintiff received the form back on June 17, 2020.

Upon consideration, the court liberally construes Plaintiff's response as a Rule 59(e) motion to alter or amend judgment. Rule 59(e) motions serve the limited function of correcting manifest errors of law or fact or to present newly discovered evidence. *United States v. Metro. St. Louis Sewer Dist.*, 440 F.3d 930,

933 (8th Cir. 2006). Based on the facts presented by Plaintiff, the court will vacate the Memorandum and Order and Judgment dismissing this matter without prejudice and direct Plaintiff's institution to remit payment of the \$4.00 initial partial filing fee to the court.

As the court previously explained, prisoner plaintiffs are required to pay the full amount of the court's \$350.00 filing fee by making monthly payments to the court, even if the prisoner is proceeding IFP. 28 U.S.C. § 1915(b). The Prison Litigation Reform Act "makes prisoners responsible for their filing fees the moment the prisoner brings a civil action or files an appeal." *In re Tyler*, 110 F.3d 528, 529-30 (8th Cir. 1997); *Jackson v. N.P. Dodge Realty Co.*, 173 F. Supp. 2d 951 (D. Neb. 2001). As Plaintiff has expressly authorized his institution to disburse the money owed, all that remains is for Plaintiff's institution to pay the initial partial filing fee from Plaintiff's account to the clerk of the court and to calculate and pay the remaining installments to the clerk of the court until the whole of the district court filing fees has been paid in full as provided by 28 U.S.C. § 1915(b). See *Henderson v. Norris*, 129 F.3d 481, 485 (8th Cir. 1997).

IT IS THEREFORE ORDERED that:

1. Plaintiff's response ([filing 10](#)), construed as a motion to alter or amend judgment, is granted.
2. The court's Memorandum and Order ([filing 8](#)) and Judgment ([filing 9](#)) dated June 11, 2020, are vacated.
3. The clerk of the court is directed to reinstate this case on the court's pro se docket.
4. By **July 30, 2020**, Plaintiff's institution shall deduct the initial partial filing fee of \$4.00 from Plaintiff's institutional account and remit payment to the clerk of the court.

5. In the event that Plaintiff lacks sufficient funds, Plaintiff's institution shall collect the whole of the district court filing fees pursuant to the installment payment provisions of [28 U.S.C. § 1915\(b\)\(2\)](#). Until the full filing fee of \$350.00 is paid, Plaintiff shall be obligated to pay, and Plaintiff's institution shall forward to the clerk of the court, 20 percent of the preceding month's income in such months as the account exceeds \$10.00.

6. The clerk's office is directed to send a copy of this order to the appropriate official at Plaintiff's institution.

7. The clerk of the court is directed to set a pro se case management deadline in this case using the following text: **July 30, 2020**: initial partial filing fee due.

8. Plaintiff is advised that, following payment of the initial partial filing fee, the next step in Plaintiff's case will be for the court to conduct an initial review of Plaintiff's claims to determine whether summary dismissal is appropriate under [28 U.S.C. § 1915\(e\)\(2\)](#). The court will conduct this initial review in its normal course of business.

Dated this 30th day of June, 2020.

BY THE COURT:



Richard G. Kopf
Senior United States District Judge